

**TRICKS**

First, the resolution uses both the terms “just society” and “ought”. Although we look to moral obligations, we have to look to obligations of justice as well.

Ross[[1]](#footnote-1),

The difference between morality and justice comes not from the difference between actions and consequences (as between morality and [euergetic](http://www.friesian.com/poly-1.htm) ethics) but from the difference between motives and actions. As Kant noted, the worth of moral action is in the intention, not in what is actually done.The imperative of morality is first of all to act with good will. Even the best of good will, however, does not necessarily produce right action --the saying is that the path to hell is paved with good intentions. And even ill will does not necessarily produce wrong action -- it is really an *ad hominem* fallacy to evaluate an action on the basis of an agent's motive. **The estimation of justice does not primarily concern intentions but what actually *is* done. There is no breach of justice unless some wrong** of negligence, violence, or fraud **has been committed** (in law the *actus reus*). Intention *then* may become an issue in judging the culpability or severity of the wrong (the *mens rea*), as between various degrees of murder, where intention, malice, and forethought progressively increase the severity of the crime (to voluntary manslaughter, second degree murder, and first degree murder, respectively). **If no wrong is committed, then it is not an issue of justice** and motives are irrelevant**.** Even **undoubted wrongs of action may be "merely" moral** ifthey are not very severe or are intrinsically difficult to prove: **willful breach of an informal, oral promise for no good reason will always be a moral wrong, but only if some** financial loss (or damage to public standing) or **physical** (or even severe enough psychological) **injury** **results will it be a breach of an actionable "**oral **contract" and** so **a judicial wrong.** There are legal rules about the factors (such as the presence of a "consideration") that must be involved if an enforceable contract is judged to exist. Breach of promise will always be *morally* actionable in the sense of voiced moral reproach or damage to personal relationships. SK

Thus, as Ross explains, the estimation of justice looks to end states as well as obligations of the government. As the resolution uses both the terms “just” and “ought”, we have to look to what adheres to both. As adhering to justice is a more specific version of morality, **I value justice**. Ross also explains how justice is primarily concerned with end states. Further, although “ought” may imply a moral obligation, the only moral obligation under an evaluation of justice is one which is based on actual harm.

**TJF**: Prefer this definition because **(1)** reliable source. This comes from a source that is knowledgeable about the topic. **(2)** Explains the definition rather than just asserting it as a statement. If fairness is a voter, then theory comes before topicality because we should accept my definition of justice for the round if it’s fair. This comes before any other T shell because it talks about evaluative term in the resolution, and as such, frames the debate. Fairness and Education are key because nobody would participate in debate without fair rules and nobody to fund it for education. If the negative does not abide to these rules, we drop them on face to deter them from being nontopical.

And, anything justice based must increase organs

I contend that Presumed consent ensures survival through increasing organs.

De Lora,

The nuances between their approaches should be highlighted, although I will not explore them in detail. Because later in the article I will engage in some discussion with her approach, I will point out now that in the case of Cécil Fabre, her aim is not, strictly speaking, to propose a confiscatory public policy of cadaveric organs, but to show, **from a principled-rights based conception of justice**, that **anyone committed to the idea that individuals’ basic needs must be met**, necessarily (as a “natural inference”) “**must take on board the need of organs**”. To that effect, **the refusal from families or the posthumous interests of the deceased are trumped by the rights of sick patients to their organs**. According to Fabre, only because the person now dead could have genuinely raised an objection that the prospect of removing one of his organs will make his life less than minimally flourishing, we should respect his desire to be left in peace after death11

Thus the standard is **ensuring survival**.

First off, organ donation is key to life.

Juanis,

Phil approaches the subject with all the fervor of a Pentecostal minister when it comes to donating the much needed organs that are necessary to save someone’s life. “There needs to be more of an awareness of Hep C and the necessity for blood donations,” he explained. “There is a tremendous whole blood shortage in the Bay Area and other places, too, I’m sure. And **organ donation is the key to life for many, many people**. It’s estimated that at least four million people in the United States are infected with Hepatitis C, and half of them don’t even know it because of various reasons – they never had the opportunity to be tested for it or they aren’t showing any symptoms of it or any liver problems. **It is estimated that in ten years there will be a need for 28,000 organs, and that’s more than three times what the average is today**. So the main thing of what I was trying to say at the shows and what I’ll put out now is, if it is your desire to become an organ donor, it is necessaryto inform your family as well because they are the ones who will haveto make the decisionin a very stressful and grievous, traumatic situation. So if that is your desire, then you’ll need to inform them; preferably in writing. Just say something like ‘In the event of my demise it is my irrevocable desire to be an organ donor.’ Your family may still decide not to do it, but at least they know how you feel about it and what your wishes would be.”

A meta-study of 26 different independent studies confirms presumed consent increases organ donation.

Rithalia et al. 9, [(Amber Rithalia, research fellow, Catriona McDaid, research fellow, corresponding author, Sara Suekarran, research fellow, Lindsey Myers, information specialist, and Amanda Sowden, deputy director Centre for Reviews and Dissemination, University of York, Impact of presumed consent for organ donation on donation rates: a systematic review, British Medical Journal, 2009; 338: a3162, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628300/#\_\_notesid949841title) [PDI] ]

Studies reviewed Five studies comparing donation rates before and after the introduction of legislation for presumed consent **(**before and after studies); eight studies comparing donation rates in countries with and without presumed consent systems **(**between country comparisons); 13 surveys of public and professional attitudes to presumed consent.¶ Results The five before and after studies represented three countries: all reported an increase in donation rates after the introduction of presumed consent, but there was little investigation of any other changes taking place concurrently with the change in legislation**.** In the four best quality between country comparisons**,** presumed consent law or practice was associated with increased organ donation—increases of 25-30%, 21-26%, 2.7 more donors per million population, and 6**.**14 more donors per million population in the four studies. Other factors found to be important in at least one study were mortality from road traffic accidents and cerebrovascular causes, transplant capacity, gross domestic product per capita, health expenditure per capita, religion (Catholicism), education**,** public access to information, and a common law legal system**.** Eight surveys of attitudes to presumed consent were of the UK public**.** These surveys varied in the level of support for presumed consent**,** with surveys conducted before 2000 reporting the lowest levels of support **(**28-57%). The most recent survey, in 2007,reported that 64% of respondents supported a change to presumed consent**.**

Thus affirm.

Presumed consent increases organ supply.

Johnstone 05:

Erica Teagarden Johnstone 05 Attorney for The State Bar of California; Bachelors degree from Duke University and Law degree from the University of North Carolina SOL at Chapel Hill, "Human Trafficking: Legal Issues in Presumed Consent Laws," NCJ Int'l L. and Com. Reg. Volume 30 (2005): 685.   
The biggest obstacle for the transplant community is scarcity of organs. A number of options for increasing supply exist. Recognizing that the creation of an organ market is one such option, some members of the legal and medical community are attacking NOTA’s prohibition on the sale or purchase of human organs. Their approach is to advocate alternatives to the prohibition, such as providing an ethically acceptable financial incentive to the beneficiaries of a decedent that may motivate an individual to formally express his intentions about donation prior to his or her death. The sale of human organs, however, whether from a living person or a cadaver, is against the law in virtually every country and has been condemned by all of the world’s medical associations. So, while some medical professionals and ethicists are currently debating the possibility of compensation for organ donors, a market in body parts is a highly controversial shift in policy that violates current U.S. law and International Protocols. Another option for increasing organ supply includes policy changes involving mandated choice or presumed consent. These policy changes offer a more viable, unified, and accepted **way of** increasing available organs, especially when compared to the creation of an organ market. Increasing consent rate among potential donors would significantly increase the number of organs available. “In fact, if all potential donors became actual donors, there would be enough hearts and kidneys available to transplant each person added to the list in 2002.” Within the consent framework, there are two options: mandated choice and presumed consent. Mandated choice is a system that requires adults to decide whether they wish to donate their organs when they die. The decision would most logically be required when obtaining a driver’s license. Part of the problem with deciphering an individual’s intent to donate his or her organs is that most people do not discuss organ donation with family members because mortality is a difficult and unpleasant topic of conversation. Under a system of mandated choice, each person is forced to consider the issue and make a decision. The individual’s decision is then honored at the time of death. In a Gallup Poll conducted in 1993, only 30% of those surveyed had signed organ donor cards. When polled to see if those surveyed would enlist to donate if mandated choice became the law, 63% said they would enlist. The survey implicitly found that the more one thinks about organ donation, the more likely he or she is to donate. Of the 25% who said they had previously given organ donation serious consideration, 76% said that they would donate their organs. Based on the results of this survey, mandated choice would increase the number of available organs. Presumed consent offers an alternative where citizens are presumed to consent to donation unless they explicitly state they do not want to be donors. The current donor system in the U.S. is an “opt-in” system which depends on “a patchwork of organ donor card, driver’s licenses, advanced directives, and durable power of attorney for healthcare statements as vehicles for citizens to state their wishes.” The opt-in system depends on the referral of all potentially medically eligible donors to the local OPO. The OPO then initiates contact with the patient’s family [and] regarding donation. The OPO tries to determine the “patient’s wishes from documentation and discussions with family.” Yet, even if the potential donor indicated his or her wish to donate, the family must also consent. In contrast to what normally happens, 82% of Americans believe that the individual, rather than his or her family should make the decision regarding organ donation. Fifty-eight percent of Americans were unsure about their own plans to donate. Only 38% had discussed their plans with their families. Most of the time, families are making the organ donation decision under stressful circumstances and do not know whether the decedent intended to donate. The natural inclination is to use the default rule. The default rule in the U.S. is not to donate organs. In contrast, many European countries operate a presumed consent system. In Belgium, for example, a national database tracks those who have opted out, and presumed consent has led [leads] to an increase in the number of available organs. In Belgium, less than 2% of the population opts out of the system. The current organ crisis in the United States suggests that NOTA and UAGA result in market failure. The shortage of organs for transplantation results in a tragic number of potentially preventable deaths. Organs are retrieved from only 15-20% of the 15,000 to 20,000 eligible donors each year and **increased efforts to encourage organ donation would save** many **more lives.** This Comment argues that **an organ procurement system based on presumed consent would help to eliminate the gap between organ supply and demand.** The nations with the highest per capita organ donation rates in the world all operate under presumed consent laws. Commentators have warned that the political prospect for enacting presumed consent laws in the U.S. is bleak. In addition, the public’s lack of support for presumed consent is grounded in legal concepts of privacy and property as they relate to the human body. This Part discusses individual autonomy and the freedom from government

**UNDERVIEW**

**(1)** Presume aff to make up for the 7:4:6:3 rebuttal time skew, and because the aff must waste time making twice as many extensions. And skepticism triggers presumption because if we cannot know if any statement is true then we must look to evaluating with no offense

**(2)** The neg must clarify every theory violation in CX so that we can have a discussion about the abuse before sacrificing the round to theory.

**(3)** Grant the aff an RVI because of time skew, I have less time to make responses to the NC so I can’t cover both theory and substance, meaning also that preemptive spikes are good as they preserve fairness.

**(4)** Any theory run on one of these spikes is a counter-interp, as each spike is itself an interp.

**(5)** Grammatically, the resolution only asks us to evaluate whether a just society ought to presume consent, without specifying implementation. Similarly, it does not specify to any type of organ procurement or presumption. Prefer this interp because grammar is how we interpret the resolution and form arguments and the first place, so it comes first when determining what to debate. This has the first link into any fairness and education voters as we could not evaluate them without the ability to comprehend grammar.

**(6)** Even if to negate means to deny, in order to have reciprocity, the negative debater has to prove the converse of the resolution true. The converse of presumed consent is informed consent. Also, if the negative has to prove the converse, that means they are subject to T as well, as they have to be resolutional.

Fevrier and Gay,

**Two types** of legislation underlie cadaveric organ donations: **[are] presumed consent** (PC) **and informed consent** (IC). **In informed consent** countries, **people are only donors when deceased if they registered to do so while alive**. **[the] Converse**ly, **[is]** in **presumed consent** countries, **[where] anybody is a potential donor when deceased.** People have thus to register if they do not want to donate their body. PC has always been perceived as the best system for society in terms of organ donations whereas IC is supposed to be more ethical. However, in both systems, the family has a say, especially for the deceased who did not sign anything while alive. Taking the family decision into account, we show that the previous results may be reversed. The difference between both systems resides in the way an individual can commit to his/her will, eventually against the opinion of his/her family. IC can dominate PC in terms of organ donations whereas PC can be a more ethical system. In the general case, two opposite effects are at stake and the result depends on the extent to which people stay in the default situation. We discuss several causes of inactions (death taboo, procrastination, anticipated regret,...) and their impact on both the individual and the family. SK

Thus, the negative must defend informed consent. Multiple more reasons to prefer: **(a)** Predictability,This is the most predictable system because it is the most popular system besides presumed consent, which largely constitutes of the most developed countries. **(b)** Topic lit. The literature divides between an opt in vs. opt out systems as these are binary systems, which increases depth of discussion because we are further able to analyze the pros and cons of each system.  Topic literature is key to fairness because it controls the internal link to ground which dictates what arguments we can even make. **(c)** Clash. This interp forces direct comparison of two systems with significant literature on both sides.  Clash controls the internal link to education because we never learn anything when we just make arguments past each other with no interaction.

**(7)** Neg must concede aff choice of role of the ballot which is to pick up the one who increases organs. In the context of this round, it means that the negative has to prove that informed consent is better than presumed consent for organ donation from the deceased, because informed consent increases organs. This is key to **real world application**, as the organ procurement debate is all centered on increasing organs.

**(8)** Neg must only gain offense from one piece of unconditional offense on a single layer, as otherwise it would be skewing my strategy as well as time in the round, as they can just spread out the aff in the 1N and it would be intrinsically unfair so I would not be able to respond to it at all.

**(9)** Neg can at most run one shell because of time skew – I can only respond to one shell in the 1AR.

**(10)** Err aff on all theory interps. Crossapply why presumption affirms paragraph theory without responding to the AC when it explains why we get to read ppg theory, it will be infinitely regressive as we cannot determine whether the ability to read paragraph theory can be justified in paragraph theory without evaluating their shell, which is unfair as it constrains my time and strat – I cannot run full shells in the AC. Also, air aff if the standards are clearly labeled in the format but without the spacing between the text – checks back their abuse story.

**(11)** Neg must concede that affirming means more organs. The only reason why we are debating this topic in the first place is because there is a reason why affirming is good for **real world application** – in the real world people believe that presumption of consent would increase the number of organs, which is why the aff must be assumed to increase organs.

Pierscionek,

It is clear that **presumed consent** **is advocated as a means of meeting organ donor shortages and not because the state wishes to assume ownership of body parts** per se. Nevertheless, **it places the greater emphasis on** functionality of **body organs and how they can be** best **utilised to sustain life** rather than on the importance of requiring permission of the individual to donate his or her organs. It also takes away the power to **'gift'** that donorship confers [[6](http://www.biomedcentral.com/1472-6939/9/8#B6)]. If functionality of body organs becomes of prevailing importance, it could be argued that the body is predominantly a vessel equipped with all the necessary instrumentation for maintaining life and that is occupied and used by the person to whom the body belongs. Consequently, if presumed consent is advocated, it could be reasoned that since after death the 'occupant' no longer needs the 'vessel', if any of the instrumentation is still functional it should be used to better or save the life of another. The acceptance of this premise and hence of the liberty of the state to assume the rights to decide about further usage (pending no objections) raises further issues about the right of ownership and hence who should benefit from body organs, and how presumed consent will extend to competent minors and mentally incompetent adults.

This is key to **ground** as the only good ground the affirmative debater has all depends on more organs. The a subpoint is double bind – the aff gets into a double bind if they do not get more organ ground. The neg would either (a) run topicality or (b) spread the aff out on why neg is an increase of organs. Crossapply why ground is key to fairness and education. Also, this is key to **clash** as the aff generates most arguments off of increasing organs, as well as **predictability**, as the most predictable affs would be based on increasing organs. This is also key to **strat** as the majority of aff strategies are based off of more organs. This is also key to **research burdens** as there are many different arguments as to why increasing organs is good, but not many independent relating specifically to presumed consent – switch side doesn’t solve because of opponent difficulty, judge choice, and round number, as well as power pairing.

1. “0 http://www.friesian.com/moral-2.htm [↑](#footnote-ref-1)